IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T.

PRABHU. V. NENA RAM.

S. B. CIVIL SECOND APPEAL NO.178/96
against the judgment and decree dated 01.06.1996,passed by the learned District & Sessions Judge Jalore in Civil Appeal Decree No.1/89.

DATE OF JUDGMENT: ::: :16-05-2007

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.H.S.Balot, for Appellant.
Mr.R.R.Nagori, for Respondent.

BY THE COURT:

This appeal is directed against the judgment an ddecree of the trial Court dated 30th November, 1988, whereby the learned trial Court decreed the suit of the plaintiff and declared the plaintiff to be the owner of half of the property in dispute. The decree passed by the trial Court dated 30th November, 1988 was

challenged by the defendant present appellant which was dismissed by the First Appellate Court vide judgment and decree dated 1st June, 1996. Hence, this second appeal by the defendant appellant.

Brief facts of the case are that the plaintif-respondent filed a suit for declaration and partition as well as other relief of possession against his own brother, the appellant-defendant, on 2nd March, 1983, alleging that originally, the plot in dispute was of the Jagirdar of village Charli of tehsil Ahore of district Jalore. The said plot was purchased by Fozmal, Champalal and Kantilal of village Charli. Ultimaely, the said plot was sold by Fozmal to the plaintiff and defendant for a consideration of Rs.251/-. A deed was executed evidencing the sale of the property by Fozmal to the plaintiff and the defendant. The said deed is not a registered document. The plaintiff claimed that both plaintiff and defendant, after purchasing the plot from Fozmal, subsequently divided the plot and half of portion was kept in the share of the plaintiff and the remaining half of the portion was kept in the share of the defendant. The plaintiff stated that the plaintiff constructed boundary wall around his plot and also constructed a gate. In the said property, he installed a Diesel Engine and started a floor mill, in the year 2030, about 13 years from the time of purchase of the said property, but due to flood in the village, his boundary wall fell down and his other structures were

damaged. At that time, one Ganesh submitted an application in the tehsil on the basis of Sanad No.743/75 which has been in the name of said Ganesh, upon which the plaintiff raised objection and in that matter, the plaintiff's right was recognised. It is said that in the said proceedings, it was clearly mentioned that the plaintiff is in possession of the property, measuring 202 x ½ sq.yards and defendant is in possession of the property of equal measurement. This deed is dated 27th December, 1971. According to the plaintiff, the defendant wanted to encroach upon the property of the plaintiff, therefore, he tried to break down the door of the plaintiff's property, upon which plaintiff lodged one FIR on 15th December, 1976. It is said that in that proceedings also, it was found that the plaintiff and defendant both are in possession of the half of the portion of the entire plot and the defendant agreed that he will not interfere in the possession of the plaintiff. According to the plaintiff, he re-constructed a hut. The defendant again tried to remove the door of the plaintiff's property, then yet another criminal case was launched by the plaintiff, which was registered as Criminal Case No.206/81. In the background of these facts, the plaintiff filed the suit for declaration, partition and possession.

The defendant submitted written statement and stated that the plot in dispute is his self-acquired property and it was never in possession of the plaintiff. The defendant in his written

statement specifically stated that he is in possession of the property since 2021, that comes to year, 1965 only. Despite his such stand in the written statement, defendant in the written statement itself stated that he obtained the possession for construction of wall in the year, 1961. The defendant also stated that his name is entered in Khasra Parivartansheel, therefore, accordign to the defendant, the sale-deed got executed by the plaintiff was subsequent to the plaintiff's acquiring the possessio of the property in dispute and, therefore, it was a fabricated document. The defendant also submitted that in the alleged sale deed, the proeprty of having value of more than Rs.100/- has been valued and since the document is not registered, therefore, on the basis of the said unregistered sale deed, the plaintiff has got no right, title or interest in the suit property. It is also submitted that the said document was not admissible in evidence. The defendant admitted that criminal cases were initiated against the defendant by the plaintiff, but, in those proceedings, the defendant never admitted plaintiff's right, title or interest in the suit property. He also stated that in case No.206/81, the defendant was acquitted.

The issues were framed and after trial, the plaintiff's suit was decreed, against which an appeal was preferred by the defendant which was allowed by the learned Appellate Court vide judgment and decree dated 10th July, 1986 partly and the

same was remanded to the learned trial Court after setting aside the judgment and decree of the trial Court dated 12th December, 1984. The matter was remanded only after framing the issues about the objections of the defendant about the suit valuation on the basis of the market value of the property. After remand, the palintiff's suit was again decreed by the learned trial Court vide judgment and decree dated 30th November, 1988. The learned trial Court held that the suit property was, in fact, originally belonging to Narpat Singh, the Jagirdar and it is admitted by the defendant as well as his witnesses that Narpatsingh sold the property to Fozmal and one of the witnesses of the defendant stated that the property was purchased by the defendant from Fozmal, therefore, the plaintiff's case that the suit property was originally belonging to Fozmal, stands proved. The learned trial Court also considered the evidence of the original owner Narpat Singh, the purchaser from Narpat Singh to Fozmal, but sold the property to the plaintiff and defendant and, thereafter, that there was no enmity of the defendant with Fozmal and in view of the totality of their evidence, the fact of sale of the property by Fozmal by plaintiff and defendant is proved. The trial Court also considered the doucments produced by the defendant as well as the oral evidence, but held from those documents that neither the old possession of the defendant is proved, nor his title to the

property is proved.

The Appellate Court dismissed the suit vide judgment and decree dated 1st June, 1996, preferred by the defendant appellant. Hence, this second appeal.

The followign substantial questions of law were framed by this Court, while admitting the appeal, on 15th January, 1997 :-

> "(1) Whether a sale deed of immovable property for consideration of Rs.251/- compulsorily requires registration and Ex.1, so-called sale deed which is unregistered and unstamped is receivable in evidence as envisaged under Sec. 17 read with Section 49 of the Indian Registration Act ?
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> (2) Whether when the terms of contract or of a grant or of other dispossession of property required under law to be reduced into a form of document and also required to be registered and it is neither registered nor stamped properly, oral evidence shall be deemed to be excluded within the meaning of Section 91 read with Section 92 of Indian Evidence Act ?
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> (3) Whether in the present suit Ex.1 is the basis of suit which has been misconstrued by both the courts below, if so, its effect ?"

So far as legal questions are concerned, the substantial question No.1 is with respect to the legal objection of the defendant that the plaintiff since claimed that he purchased the suit property for a consideration of Rs.251/-, then the same

could have been effected only by a registered sale deed and since sale deed was not registered, that was not admissible in evidence. The law on this question is well settled that the property having market value of more than Rs.100/- can be sold only by a registered sale deed. An unregistered sale deed could not have been admitted in evidence to prove the title. The question, in the present appeal, is not with respect to the only dependant upon the finding of substnatial question No.1. The plaintiff filed the suit, claiming himself to be the owner by virtue of the sale deed of the Samvat year, 2017, corresponding date given is 8th May, 1961. He claimed that he is in possession of the suit property since then and the plaintiff and defendant both acted upon the sale deed, kept their possession in the property and, thereafter, divided the property by mets and bounds, but since there was no formal partition and defendant wanted to encroach upon the plaintiff's property, therefore, he filed the suit for declaration and injunction. The plaintiff as soon as sought declaration of his title over the property in dispute, then the plaintiff could have based his claim on the basis of the title which he derived by the virtue of the sale deed (Ex.1) executed by Fozmal for a consideration of Rs.251/-. At the same time, since no relief has been claimed against the vendor of the property, then he could have claimed his title on the basis of the possession over the property as possessory title, the plaintiff in

his suit claimed possessory title also, therefore, if the sale deed dated 8th May, 1961 is discarded, then, the plaintiff's claim is on the basis of his possessory title. At the cost of repetition, it may be observed that the suit has not been filed against the vendees, what the property he could have sold that by virtue of the sale deed, the right of the vendor has not been extinguished, nor the vendee acquired any right in the property by virtue of the said sale deed. So far as the title to the property is concerned, in view of the evidence even of the defendant and his witness, the property was originally belonging to Narpat Singh and, thereafter to Fozmal, is the admitted case. The two courts-below relied upon the oral statement of these two persons – Narpat Singh and Fozmal and, thereafter, recorded the finding of fact that, in fact, the vendors sold the property in sequence of which the plaintiff stated. At this stage, It will be worthwhile to mention here that the defendant's witness DW 2 Jorawar Singh stated that the defendant purchased the property from Fozmal, whereas this was not the case of the even defendant. Be that as it may, but it amounts to admission of the defendant's witness of the title of Fozmal. DW 2 also admitted that the property was originally belonging to Narpat Singh.The plaintiff also produced a copy of the Sanad (Ex.4) as back as of 5th January, 1967 and, in that Sanad (a Patta in favour of Ganesh), there is a mention of plot of the plaintiff and the defendant as one of the vendors. It

is true that all contents of Ex.4 are not binding on the defendant, but on the basis of own fact and evidentiary value, it cannot be presumed that the said document was got executed as back as on 5th January, 1967 for the purpose of using in the litigation betgween the plaintiff and the defendant. Therefore, the findings of the courts-below is based not only on oral evidence, but on documentary evidence also, which clearly proves the possessory title of the plaintiff. The plaintiff admitted that the property was pruchased by both plaintiff and defendant, then, in all probabilities, that contention is just and probable and was rightly accepted by the two courts below.

The two courts below considered the doucments produced by the defendant as against the plaintiff's document. The defnedant's contention that he obtained the permission to raise the construction in the year, 1961 destroys the defendant's own case that he took possession of the property in the Samvat Year, 2021, corresponding to the year, 1965. Then, before 1965, admittedly, the defendant claimed that he had no right and title in the property, but that fact shows that the defendant is not disclosing the true facts, because of the reason that the defendant admitted that the construction permission was obtained in the year, 1961, then that comnes to the time when the sale was got executed by the plaintiff and the defendant, i.e., in the year, 1961. In view of the above reasons, the plaintiff

proved by exercising his right as owner of the property, being co-sharer remained in possession of the property since 1961, till he filed the present suit. The defendant is estopped from challenging the title of the plaintiff, because of the reason that by same sale-deed, the defendant himself purchased the property from Fozmal along with the plaintiff. Therefore, the defendant is estopped from challenging the title of the property. In view of the above reasons, the substantial question No.1 is decided in that manner that the sale deed for the sale of immovable property having market value more than Rs.100/- is required to be effected by registered sale deed only and unless it is registered, it is not admissible in evidence to prove the title but, at the same time, it cannot be admitted in evidence for collateral purposes and to find out the time and nature of the possession of the parties.

The part of substantial question No.1 had already been answered in the above paragraphs of this judgment. The second part of substantial question No.2 is whether the oral evidence is excluded by Sections 95 and 92 of the Indian Evidence Act. This may not detain the Court more because of the reason that it is not a case of proving the contents of the documents by the plaintiff or contributory in the contents by a document, but it is a case of claiming title by long possession over the property in dispute, that may not be against the owner of the property,

therefore, the second part of substantial question No.2 based on the interpretation of Sections 91 and 92 , in fact, does not arise in this appeal.

The substantial question No.3 is with respect to the construction of Ex.1 which is held to be admissible only for collateral purposes then, the appeallant failed to prove from Ex.1 that it was misconstrued when it was interpreted, to meet that point of deed, Fozmal sold the property to the plaintiff and the defendant. It may against be relevant to mention here that the execution of the sale deed may be a fact, that can be accepted as a fact, may not it extinguish the right of the seller and may not give right to the purchaser and, only for that purpose, it is mentioned that Ex.1 has not been misconstrued by the two courts below and it may not be misunderstood that by this observation, this Court held that by Ex.1, the property stands sold to the plaintiff and the defendant. The plaintiff and the defendant, otherwise acquired the title to the property, in view of the statements of Narpat Singh as well as Fozmal and in view of the statements of other witnesses also.

In view of the above reasons, the appeal has no merit, hence dismissed.

(PRAKASH TATIA), J.

scd.